DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0071
Indiana Adjusted Gross Income Tax
For the Year 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Voluntary Nature of the Indiana Adjusted Gross Income Tax.

Authority: IC 6-8.1-11-2; Couch v. United States, 409 U.S. 322 (1975); Flora v. United States, 362 U.S. 145 (1960); Helvering v. Mitchell, 303 U.S. 391 (1938); United States v. Gerads, 999 F.2d 1255 (9th Cir. 1993); McLaughlin v. United States, 832 F.2d 986 (7th Cir. 1987); McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985).

Taxpayer argues that the state may not require her to pay Indiana adjusted gross income tax because she has not volunteered to do so.

II. Indiana Adjusted Gross Income Tax Liability.

Authority: IC 6-3-1-3.5; Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003); Cooper Industries, Inc. v. Ind. Dept. of State Revenue, 673 N.E.2d 1209 (Ind. Tax Ct. 1996); 45 IAC 3.1-1-1; I.R.C. § 62.

Taxpayer maintains that because she did not file a corresponding federal income tax return, Indiana law and the directions on the Indiana IT-40 tax form require that she not file a state income tax return.

III. Authority to Withhold Income Taxes.

Authority: IC 6-3-4-8(a); IC 6-3-4-8(a)(1); IC 6-3-4-8(d); IC 6-3-4-8(f).

Taxpayer argues that her employer was without authority to withhold Indiana income taxes from her paychecks and that, as a result, the Department of Revenue should promptly refund the amounts improperly withheld.

IV. Affidavit of Non-Liability.

Authority: Cheek v. United States, 498 U.S. 192 (1991); United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007

(9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); Black's Law Dictionary (7th ed. 1999).

Taxpayer states that she is not liable for the income taxes indicated on the notice of "Proposed Assessment" because she submitted an "Affidavit of Non-Liability."

STATEMENT OF FACTS

Taxpayer lives in Indiana. The Department of Revenue (Department) determined that taxpayer owed Indiana income tax for the year 2000 and sent a notice of "Proposed Assessment" to that effect. Taxpayer – describing herself as a "living spirit inhabitant" – disagreed with the assessment and sent the Department correspondence stating as much. The correspondence consisted of an "Affidavit of Non-Liability," a five-page statement setting out various legal arguments, a "STATEMENT in Lieu of a IDOR Return," a "Lawful Notice: Change of Mailing Location," and a "RELIANCE Letter" prepared on taxpayer's behalf by John J. Schlabach an "Enrolled Agent." Although denying that she was a "protestor," taxpayer's factual and legal challenge to the proposed assessment was treated as a protest, and an administrative hearing was conducted during which taxpayer summarized the basis for her challenges. This Letter of Findings results.

DISCUSSION

I. Voluntary Nature of the Indiana Adjusted Gross Income Tax.

Taxpayer claims that the proposed assessment is without foundation because she did not volunteer to pay either federal or state income taxes. In particular, taxpayer cites to Flora v. United States, 362 U.S. 145, 176 (1960) which states, "Our system of taxation is based upon voluntary assessment and payment, not upon distraint." Taxpayer accurately quotes the case language, but the quotation is taken out of context. The issue before the Court was not whether the petitioner "volunteered" to pay income tax or whether the petitioner could unilaterally decide not to pay income tax. The issue before the Court was whether the petitioner could bring a refund action against the Internal Revenue Service without first having paid the proposed assessment. Id. at 146. The Court disagreed with petitioner's argument stating that to "to accept petitioner's argument, we would sacrifice the harmony of our carefully structured twentieth century system of tax litigation . . . ." Id. at 176. The Court held that petitioner/taxpayer had to pay the assessment before bringing the refund action. Id.

Nevertheless, Indiana's tax law clearly states that the state's adjusted gross income tax scheme is based on "voluntary compliance." IC 6-8.1-11-2 reads as follows:

> The general assembly makes the following findings: (3) The Indiana tax system is based largely on *voluntary compliance*. (4) The development of understandable tax laws and the education of taxpayers concerning the tax laws will improve *voluntary compliance* and the relationship between the state and taxpayers. (*Emphasis added*).

Nonetheless, taxpayer's basic premise is without merit. Neither the federal nor the state income tax law suggests that an individual can opt out of one's income tax liability by declaring that he or she did not "volunteer" to pay income tax. In describing the nature of the federal tax system, the United States Supreme Court has stated that, "In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts. This disclosure it requires him to make in his annual return. To ensure full and honest disclosure, to discourage fraudulent attempts to evade the tax, Congress imposes sanctions. Such sanctions may confessedly be either criminal or civil." Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

Taxpayer's contention – that Indiana depends on its citizens' voluntary compliance with the tax laws – is undeniable. Indeed, Indiana also depends on its licensed drivers to drive on the right side of the road. However, that does not mean that driving on the wrong side of the road is without predictable legal and practical consequences. "Any assertion that the payment of income taxes is voluntary is without merit. It is without question that the payment of income taxes is not voluntary." United States v. Gerads, 999 F.2d 1255, 1256 (9th Cir. 1993). "The notion that the federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation, but despite [appellant's] protestation to the contrary, has been repeatedly rejected by the courts." McLaughlin v. United States, 832 F.2d 986, 987 (7th Cir. 1987). "[A]rguments about who is a 'person' under the tax laws, the assertion that 'wages are not income', and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law*." McKeown v. Ott, No. H 84-169, 1985 WL 11176 at *2 (N.D. Ind. Oct. 30, 1985) (Emphasis Added). Such arguments "have been clearly and repeatedly rejected by this and every other court to review them." Id. at *1.

The Supreme Court has stated that the government's federal income tax system is "largely dependent upon honest self-reporting." Couch v. United States, 409 U.S. 322, 335 (1975). However, the government's reliance on its citizens' honest, self-reporting does not support the proposition that taxes themselves are optional. Taxpayer's bare assertion, that, based on precatory language such as that contained within IC 6-8.1-11-2, she no longer "volunteers" to pay income taxes, does not fall within any reasonable definition of "honest self-reporting."

FINDING

Taxpayer's protest is denied.

II. Indiana Adjusted Gross Income Tax Liability.

Taxpayer argues that because she did not file federal returns for the year here at issue, she was not required to file a state return. According to taxpayer, because the IT-40 specifically requires

that she enter her federal adjusted gross income from her federal return and because she did not file a federal return, she was compelled by force of law and under penalty of perjury to not file a state return.

The Indiana tax returns here at issue employ federal adjusted gross income as the starting point for determining the taxpayer's state individual income tax liability. Line one of the Indiana IT-40 form instructs the taxpayer to "Enter your federal adjusted gross income from your federal return (see page 10)."

IC 6-3-1-3.5 states as follows: "When used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined in Section 62 of the Internal Revenue Code) . . . ." Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department's own regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

> Adjusted Gross Income for Individuals Defined. For Individuals, "Adjusted Gross Income" is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:
>
> > (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
> > (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
> > (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require that an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer's Indiana adjusted gross income.

Taxpayer's contention – that she was compelled by force of law to not report Indiana adjusted gross income because she declared no federal adjusted gross income – is patently without merit. The statute is plainly written and is unambiguous. Indiana adjusted gross income begins with federal taxable income as defined by I.R.C. § 62 not merely as reported by the taxpayer. *See* Cooper Industries, Inc. v. Ind. Dept. of State Revenue, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996). The directions contained within the Indiana income tax form provide the individual taxpayer with abbreviated directions for completing the form; the directions are not the means for determining the taxpayer's adjusted gross income liability. The Indiana tax form instructs the taxpayer to put what number in what box. However, the taxpayer must actually put *a* number in the box and must put the *correct* number in the box. The directions on the tax form notwithstanding, taxpayer is nonetheless required to actually perform the calculations necessary to determine his liability for Indiana adjusted gross income tax and must file a state return reflecting those calculations.

The Indiana Tax Court addressed taxpayer's contention in Clifford R. Eibeck v. Ind. Dept of Revenue, 779 N.E.2d 1212 (Ind. Tax Ct. 2003). "[I]t must be remembered that tax forms are used merely as an aid for taxpayers in calculating their taxable income in accordance with the

income tax law. Therefore, calculating Indiana's adjusted gross income begins with federal taxable income as *defined* by Section 61(a) of the United States Code, not as what a taxpayer *reports* on its federal tax form." Eibeck 779 N.E.2d at 1214 n.6 (*Emphasis in original*). Taxpayer's erroneous failure to file federal returns does not excuse the failure to file state returns; taxpayer's second error merely compounds the first.

FINDING

Taxpayer's protest is denied.

III. Authority to Withhold Income Taxes.

Taxpayer claims that she is entitled to a refund of taxes withheld from her paychecks during 2000 because her employer was without authority to withhold the taxes.

IC 6-3-4-8(a) states that, "Except as provided in subsection (d), *every* employer making payments of wages subject to tax under IC 6-3, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department." (*Emphasis added*). IC 6-3-4-8(d) provides an exception for county employers which pay wages "to a precinct election officer . . . [or] or for the performance of the duties of the precinct election officers imposed by IC 3 that are performed on election day." The employer is without discretion in this matter; an "employer making payments of any wages[] *shall* be liable to the state of Indiana for the payment of the tax required to be deducted and withheld . . . and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section . . . ." IC 6-3-4-8(a)(1) (*Emphasis added*).

Unless the employer can determine that a particular employee is not subject to Indiana adjusted gross income tax, that employer is required to withhold a portion of that employee's wages and forward that amount to the Department. There is no indication that taxpayer demonstrated to her employee that she was not required to pay Indiana income tax. Therefore, taxpayer's employer was required to withhold a portion of the taxpayer's wages from her paycheck. Once withheld, the employer held the taxes "in trust for the state of Indiana . . . ." IC 6-3-4-8(f).

Taxpayer may not claim a refund of taxes based simply upon the mistaken notion that her employer was without authority to withhold her state income taxes.

FINDING

Taxpayer's protest is denied.

IV. Affidavit of Non-Liability.

At the time taxpayer submitted her challenge to the notice of "Proposed Assessment," she also submitted an "Affidavit of Non-Liability." In the affidavit, taxpayer disclaimed any liability for state income taxes stating that "For the Record, I am not in Receipt of any proper Commercial Paperwork that controverts the following true Facts." Among the "true facts" upon which taxpayer relies is the assertion that she "is not defined as a Taxpayer," and that she had "no 'income' for any years in question." Other "true facts" assert that taxpayer is not a corporation, that she did not volunteer to pay federal income tax, that she did not enter into a contract to pay federal income tax, and that she "incurred [no] liability for the federal income tax."

In order to assure the Department that the claims were correct, taxpayer swore – under her own "commercial liability and penalty of perjury" – that the claims were based upon true and not false facts. In addition, the affidavit specifies that if the arguments contained within "are not countered with proof within (14) fourteen day," that the arguments would be considered accurate.

By means of the affidavit, taxpayer seeks to establish that she is not liable for state income tax. An affidavit is defined as, "A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." Black's Law Dictionary 58 (7th ed. 1999).

Taxpayer's "affidavit" is simply a restatement of arguments challenging the legitimacy of the federal income tax. For example, taxpayer asserts that she is not a corporation and that she did not contract with the government to pay income taxes. However, taxpayer's legal arguments are meritless and do not comport with either the law or with ordinary, common sense. There is not one single federal or state court case with remotely supports taxpayer's ill-developed legal theories. To the contrary, federal and state court cases have consistently, repeatedly, and without exception concluded that an average citizen's wages – no matter in what form the taxpayers have attempted to characterize, define, or label those wages – are income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); United States v. Romero, 640 F2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves."). As recently as 1991, the Supreme Court characterized as "frivolous" the notion that "the income tax law is unconstitutional." Cheek v. United States, 498 U.S. 192, 205 (1991).

In addressing taxpayer's argument, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United States Supreme Court and federal circuit courts,

and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's "affidavit" – "subscribed and sworn" by a notary public – is simply a clumsy device to clothe taxpayer's unfounded legal conclusions with an air of legitimacy. The device is no more factually or legally effective than an affidavit claiming ownership of Jupiter's moons.

FINDING

Taxpayer's protest is denied.

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